

REMARKS

The Final rejection mailed November 18, 2008, and the prior art relied upon therein have been carefully studied. The claims are amended above to incorporate claim 19 into claim 15, so that the elected claims presented are claims 15-17, 20-22, 24, 25 and 28. These claims are respectfully submitted to define novel and unobvious subject matter, and therefore should be allowed. Favorable reconsideration, and allowance are earnestly solicited.

Acknowledgment by the PTO of the receipt of applicants' papers filed under Section 119 is noted.

An IDS with two new citations is being filed on even date herewith.

The withdrawn claims 1 and 3-13 are being retained in view of the rejoinder notice appearing in the Office Action of March 20, 2008. Accordingly, withdrawn claim 1 is amended above consistent with the amendment presented above to claim 15. Rejoinder of the withdrawn claims and allowance thereof along with allowance of claim 15 and the claims which depend therefrom.

Claim 15 is amended above to incorporate the subject matter of claim 19, and also to incorporate the subject matter of original claim 2, support also being found in paragraph [0017] of the U.S. publication of the present application, and at page 4, lines 12-15 of the present application as filed. Withdrawn claim 1 is similarly amended and thus ready for allowance upon rejoinder. These amendments are made without prejudice to applicants' rights to pursue broader claims at a later date in a continuing application, if applicants choose to do so, and without any penalty whatsoever, applicants in such a case relying at least on Sections 120 and 119 (and Section 121 for any withdrawn subject matter).

Claims 15, 16, 20, 22 and 28 have been rejected as obvious under Section 103 from Taranta et al Published U.S. application 2002/0098221 (Taranta). This rejection is respectfully traversed.

Claim 19 has not been so rejected. As claim 15 is presented above in amended form including the dependent part of claim 19, applicants understand that this rejection does not apply to any of applicants' claims as amended above, and applicants are proceeding in reliance thereof, regardless of the propriety of the rejection.

Claims 17, 21 and 23-25 have been rejected as obvious under Section 103 from Taranta in view of Lubetsky et al EP 0670113 (Lubetsky). This rejection is respectfully traversed.

Again, claim 19 has not been so rejected, and applicants accordingly understand that the claims as amended above are not subject to this rejection, and applicants are proceeding in reliance thereof, again regardless of the propriety of this rejection.

Claim 19 has been rejected as obvious under Section 103 from Taranta in view of Aven USP 6,165,940. This rejection is respectfully traversed.

The PTO takes the position that Taranta discloses everything recited in claim 15 as previously pending except for a composition that comprises a lactate ester (paragraph 10 of the Office Action; although paragraph 9 states that the Taranta composition may include a carboxylic acid lactate), and an EW composition comprising any of the claimed pesticides (paragraph 18 of the Office Action), but the PTO then relies on Aven to supply some of the claimed pesticides (Office Action paragraph 19), taking the position that it would have been obvious to substitute an Aven pesticide for a Taranta pesticide in the Taranta composition, and thereby obtain the

claimed subject matter of claim 19 (now incorporated into claim 1). Applicants respectfully disagree.

Aven is effectively relied upon, as understood, to show that certain pesticides are old and have been used in non-aqueous suspension concentrates for agricultural purposes, which of course is readily acknowledged as applicants have never alleged to be the inventors of such known pesticides or their use in non-aqueous suspension concentrates (SC formulations). Aven would add little to Taranta even if the proposed combination were obvious.

Thus, a main issue is whether or not Taranta teaches the person of ordinary skill in the art to use a lactate ester to inhibit crystal growth. Applicants respectfully submit that Taranta does not do so, and indeed teaches away from such a use.

Insofar as applicants can see from a review of the Taranta disclosure, the only mention Taranta makes of control of crystallization appears in paragraph [0045] where it is pointed out that a polar co-solvent is added (preferably in an amount of at least 2% and in particular at least 8% by weight) "to avoid crystallization during the dilution before application." The clear teaching of Taranta insofar as crystal inhibition is concerned is to use a polar co-solvent, which is a teaching **away from** the present invention.

To reiterate in more detail, Taranta teaches that the formulation is to comprise from between 1 to 25% by weight of a co-solvent such that crystallization of the product is inhibited (see paragraph [0045]). It should therefore be noted that Taranta merely teaches that *"It may be advantageous, especially when the active substance is not very soluble in the ester-solvent, to incorporate one or more polar co-solvent"* (please refer to paragraph [0042]) and that *"The content of the co-solvent is generally 1 to 25% by weight...The content of the co-solvent will generally be chosen as low as possible but high enough to increase the solubility of the active substance to obtain the targeted loading of the active substance in the finished product and to avoid crystallization during the dilution before application"* (please refer to paragraph [0045], emphasis added).

The examiner's attention is respectfully invited to the fact that the co-solvents used for the purpose of crystal inhibition and described in paragraphs [0042], [0043] and [0044] of Taranta are not lactate esters.

Accordingly, it is clear that there is no recognition in Taranta that lactate esters can inhibit crystallization, and that Taranta teaches use of co-solvents (which are not lactate esters) in order to avoid

crystallization, and therefore teaches away from the use of lactate ester as crystallization inhibitor.

Further to the solvents mentioned in Taranta in paragraphs [0030] through [0040], it is to be noted that this disclosure constitutes a huge "basket" or "shot gun" disclosure which does not put the person of ordinary skill in the art in possession of any particular solvents, and is akin to presenting a person with the face of a combination lock and expecting that person to figure out the combination: everything is there, but what numbers must be selected is not obvious. The only real guidance given in the Taranta disclosure is to be found in the examples, i.e. Table 1 where no lactate is used.

The prior art provides no reason for selecting a lactate from among the many hundreds or more possibilities listed in paragraph [0030] through [0040] of Taranta. Moreover, taking into account the surprising discovery made by the present applicants that lactate esters would inhibit crystallization of fungicides (which exhibit a high tendency toward crystallization when diluted with water), there is not the remotest hint in Taranta that would lead the skilled artisan to the present invention. Stated another way, the prior art provides no reasonable expectation of applicants' result.

Moreover, Taranta teaches the use of insecticides in the formulation. The active ingredients claimed in the present invention (i.e. fungicides) are not mentioned. In order to solve the crystallization problems of the fungicides, a person skilled in the art based on the teaching of Taranta would not arrive to the claimed invention since there is no suggestion or teaching or reason to select lactate esters as crystallization inhibitors for the fungicides recited.

Again, Taranta provides a long list of solvents on paragraphs [0030] through [0040], however does not provide any guidance for selection of lactate ester as crystallization inhibitors for either fungicides (not disclosed at all) or insecticides.

Thus, the claimed invention provides a unique and efficient solution to the crystallization problems of the fungicides recited, which exhibit a high tendency toward crystallization, when diluted with water.

As briefly noted above, Aven discloses and teaches no more than what is acknowledged as known, and does not lead the person of ordinary skill in the art to make up for the deficiencies of Taranta as pointed out above. As also noted above, Aven relates to a non-aqueous suspension concentrate (SC) formulation. Aven teaches that the concentrate can be formulated into aqueous dispersions and emulsions (column 8,

lines 21-25) *"aqueous dispersions and emulsions, for example compositions obtained by diluting the SC of the invention with water, also lie within the scope of the invention."*

Aven thus is not directed to an EW formulation as claimed, as Aven explicitly teaches a suspension concentrate. Upon dilution, such a suspension concentrate would not form an EW formulation and therefore an EW formulation is not disclosed. The examiner's attention is respectfully invited to the fact that in the field of agriculture EW formulations relate to the case where the active pesticide is dissolved (not suspended) in the water immiscible droplets.

Dilution of a suspension concentrate of Aven with water would not lead to an EW formulation since the pesticide will be present in a suspended form in the water immiscible solvent.

In this latter regard, the proposed combination of Taranta in view of Aven really does not even make any sense, and therefore applicants respectfully urge that the proposed combination would not have even been obvious to the person of ordinary skill in the art at the time the present invention was made.

However, applicants at present believe that the most important point involves the deficiencies of Taranta, clearly not supplied by Aven, and particularly that Taranta teaches

the need of a polar co-solvent to control crystallization, that there's nothing in Taranta to select lactate esters from among the huge basket or shot gun disclosure of solvents, and that there is no recognition whatsoever that lactate esters can control crystallization. Applicants' invention would not have been obvious to the person of ordinary skill in the art at the time the present invention was made.

Withdrawal of the rejection is in order and is respectfully requested.

Applicants respectfully submit that all issues raised in the final action are addressed above in such a way as to lead to patentability of the present application. Favorable reconsideration, entry of the amendments presented above, and allowance are earnestly solicited.

Respectfully submitted,

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